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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications Act)
of 1996)

COMMENTS OF AMERITECH

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Ameritech¹ submits these comments in response to the Commission's
Further Notice of Proposed Rulemaking in this proceeding.²

I. INTRODUCTION AND SUMMARY.

In the FNPRM, the Commission specifically asks:

whether requesting carriers may use unbundled dedicated or shared
transport facilities in conjunction with unbundled switching, to originate or
terminate interstate toll traffic to customers to whom the requesting carrier
does not provide local exchange service.

FNPRM, ¶ 61. The answer is no.

¹ Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, (August 18, 1997) ("FNPRM").

More particularly, a proper reading of Section 251(c)(3) of the Act, which deals with unbundled network elements (“UNEs”), evidences no Congressional intent that interexchange carriers (“IXCs”) be permitted to use UNEs solely as a substitute for an incumbent local exchange carrier’s (“incumbent LEC’s”) exchange access service. Such an interpretation would result in the de facto elimination of Part 69 interstate access charges and the Commission’s jurisdiction over such charges. Such a result cannot have been intended by Congress, nor can the language of the Act be read to require it, because that result would be flatly inconsistent with other provisions of the Act concerning the maintenance of the existing access charge regime, the Commission’s continued jurisdiction over such charges, and universal service.

In addition, judicial and Commission decisions have confirmed this statutory interpretation, finding as well that there are no policy reasons for requiring this “UNE exchange access” at this time. In particular, “UNE exchange access” is completely unnecessary to the development of local competition which is the primary focus of Sections 251 and 252 and does absolutely nothing to facilitate or speed such competition. Moreover, it is completely at-odds with the Commission’s reasoned, phased-in, market-based approach to access reform. In fact, the resulting revenue shortfall from requiring “UNE exchange access” would be highly disruptive of incumbent LEC operations and could have negative effects on universal service reform.

Accordingly, the Commission should not read Section 251(c)(3) to require UNEs to be made available for use solely as a substitute for exchange access service.

II. ESTABLISHED PRINCIPLES OF STATUTORY INTERPRETATION PRECLUDE ANY READING OF SECTION 251(c)(3) THAT WOULD COMPEL INCUMBENT LECs TO PROVIDE UNBUNDLED NETWORK ELEMENTS TO CARRIERS FOR THEIR USE IN ORIGINATING OR TERMINATING INTEREXCHANGE TRAFFIC TO END-USERS WHO ARE NOT THEIR OWN LOCAL EXCHANGE CUSTOMERS.

The FNPRM states that “[p]arties that advocate restricting the use of transport network elements should address whether such restrictions are consistent with section 251(c)(3) of the Act, which requires incumbent LECs to provide access to unbundled network elements ‘for the provision of a telecommunications service.’” FNPRM, ¶ 61. As demonstrated herein, such a “restriction” on the use of UNEs not only is consistent with 251(c)(3), but is compelled by established rules of statutory construction and by any reasonable reading of the Act. Indeed, to read Section 251(c)(3) to allow carriers to use UNEs in lieu of exchange access service to originate or terminate interexchange traffic to or from end-users other than their own local customers (what will be referred to as “UNE exchange access”) would be directly contrary to other, more specific sections of the Act and render them a nullity. It would also undermine the fundamental policies of the Act as a whole. Accordingly, the Commission should not -- indeed, cannot -- read Section 251(c)(3) to compel incumbent LECs to make

UNEs available for use solely as a substitute for the incumbent LEC's exchange access service.

To fully understand why Section 251(c)(3) does not require "UNE exchange access," it is critical to understand the legal, practical, and policy impacts that allowing "UNE exchange access" would have. First, "UNE exchange access" would, as a practical matter, replace virtually all interstate access services. The reason is this: IXC's can avoid paying access charges by simply purchasing UNEs (e.g., shared transport and unbundled switching) from the incumbent LEC (at the much lower, cost-based prices required by the Act), the only economically rational course for the carrier would be to use UNEs for all of its access traffic.

Second, "UNE exchange access" would effectively surrender the Commission's jurisdiction over interstate access charges to the states. As just explained, if "UNE exchange access" became available, all rational carriers would purchase UNEs rather than buying access. Jurisdiction over UNE prices, however, rests with the states rather than the Commission. See Iowa Utilities Board v. FCC, Docket Nos. 96-3321 et al., slip op. at 99-113 (8th Cir. July 18, 1997). As a practical matter, then, the states would effectively have authority over interstate "exchange access" provided in the guise of UNEs.

Taken together, these changes in how exchange access service would be obtained and regulated would directly conflict with Congress' assumption that access reform would be supervised by the Commission and conducted in an

orderly, measured manner, consistent with the Act's other objectives. These changes also would conflict with the Commission's program for implementing that Act through a "trilogy" of separate, albeit related, proceedings regarding (1) Section 251, (2) universal service reform, and (3) access charge reform.³ Given the structure and multiple, interrelated purposes of the Act (including orderly, Commission-directed reform of access charges and universal service in separate proceedings), the only reasonable conclusion is that Congress obviously did not intend the draconian results that would be caused by "UNE exchange access."

A. Allowing UNEs to Be Used Solely For Exchange Access Would Directly Conflict With Other Sections of the Act and With Its Structure and Purpose.

IXCs undoubtedly will argue that the "plain meaning" of Section 251(c)(3) requires that they be able to obtain "UNE exchange access." It is well-established, however, that statutory language cannot be read in isolation; rather, it must be read as an integrated part of the statute as a whole. King v. St. Vincent's Hospital, 502 U.S. 215, 221 (1991) (a "cardinal rule" of statutory interpretation is that "a statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context") (citation omitted); Commissioner v. Engle, 464 U.S. 206, 223 (1984) ("The true meaning of a statute . . . , however precise its language, cannot be ascertained if it be considered apart

³ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Report and Order (August 8, 1996) ("Local Competition Order") at ¶¶ 6-8.

from related sections.”); United States National Bank of Oregon v. Independent Insurance Agents of America, Inc., 508 U.S. 439, 455 (1993) (“Over and over we have stressed that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”) (citation omitted).

Likewise, the “plain meaning” axiom does not apply when it would eviscerate companion provisions of the same Act or lead to absurd or unintended results. See Green v. Bock Laundry Machine Co., 490 U.S. 504 (1989) (rejecting literal reading of Fed. R. Evid. 609 that would have led to unthinkable, unintended results); Environmental Defense Fund, Inc. v. EPA, 82 F.3d 451, 468 (D.C. Cir. 1996) (“plain meaning” does not control where “the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafters”). And that is precisely what would occur if incumbent LECs were required to provide UNEs to IXC’s for their use as a direct substitute for interstate exchange access to provide themselves or others with access to end users who are not their local exchange service customers. Indeed, requiring “UNE exchange access” would directly conflict with several other provisions of the Communications Act: Sections 251(g), Section 251(i).

1. The most obvious impact of reading Section 251(c)(3) to require “UNE exchange access” is that it would conflict with Section 251(g)’s express

requirement that access charges and rules continue until the Commission issues superseding regulations. Section 251(g) provides that:

each local exchange carrier . . . shall provide exchange access . . . and exchange access service for such access to interexchange carriers . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of [the Act] under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after date of such enactment. (Emphasis added).

In other words, in Section 251(g) Congress (i) retained intact the existing access charge regime and the Commission's jurisdiction over interstate access charges, and (ii) indicated that the Commission, rather than Congress, should control the nature and pacing of any reform of interstate exchange access (including rates) through the promulgation of new regulations in a separate proceeding. Until that time, local exchange carriers are required to "provide exchange access . . . and exchange services for such access" on the terms that applied before the Act.⁴ Eliminating the existing access charge structure through Section 251(c)(3) and "UNE exchange access," however, would make Section 251(g) superfluous and render meaningless any of the Commission's efforts at interstate access reform by transferring jurisdiction over interstate exchange access to the states.

⁴ See Local Competition Order, ¶ 30 noting that "[b]ecause access charges are not included in the cost-based prices for unbundled network elements, and because certain portions of access charges currently support the provision of universal service," certain provision had to be made to allow incumbent LECs to keep recovering access charges to "preserv[e] the status quo with respect to subsidy payments" "until the access charge reform and universal service proceedings have been completed."

The legislative history of the Act confirms that Section 251(g) means what it says. For example, the Conference Report made clear that the pre-Act access-charge regime would stay in place “between the date of enactment [of the 1996 Act] and the date the Commission promulgate[s] new regulations under [Section 251(g)].” Conference Report on the Telecommunications Act of 1996, H.R. Rep. No. 458, 104th Cong., 2d Sess. 123 (1996); see also S. Rep. No. 23, 104th Cong., 1st Sess. 19 (1995) (“nothing in [Section 251] is intended to affect the FCC’s access charge rules”). Several members of Congress reconfirmed that the Act was intended to keep access charges intact and that the Commission alone retained full authority to review the issues and promulgate new regulations. House Judiciary Committee Chairman Hyde, who offered Section 251(g) as an amendment at conference, explained in a letter to the Commission that “the conferees adopted [Section 251(g)] because we wanted to keep in place the equal access, nondiscrimination, and access charge regimes as they existed under the AT&T Consent Decree and the Commission’s rules until the Commission specifically addressed these issues in a rulemaking.” Letter from Henry J. Hyde to Reed Hundt, 1-2 (July 15, 1996) (emphasis added).

In accordance with Congress’ expectation expressed in Section 251(g), the Commission exercised its authority by establishing a separate docket to address access charge reform issues, apart from the other aspects of the “competition trilogy” (see Local Competition Order, ¶¶ 6-8), including the local competition

prong of the trilogy.⁵ In fact, the Commission has now completed the first stages of the access charge reform docket and issued new regulations.⁶

To find that Section 251(c)(3) requires that competing carriers be allowed to use UNEs as a complete substitute for exchange access would directly conflict with Section 251(g) and Congress' vision of how access reform would proceed on a track separate from the opening of the local exchange marketplace.⁷ Indeed, if Congress had meant for Section 251(c)(3) to require "UNE exchange access," there would have been no need for Section 251(g): Why retain Part 69's pricing regime under 251(g), and why even discuss separate Commission proceedings on access charge reform, when a cost-based alternative must be made available to IXC's immediately under Section 251(c)(3) regardless of what the Commission does? Likewise, what would be the point of access reform when, with the availability of "UNE exchange access," there would likely be no further purchases of Part 69 access?

Thus, read literally, Section 251(c)(3) would render Section 251(g) superfluous and meaningless by completely eliminating the need for the access

⁵ Accord, Letter from Newt Gingrich, David Bonior, et al., to Reed Hundt (July 12, 1996) ("In Section 251(g) of the Act we indicated that we do not intend for the access charge system to be undermined through the completion of the interconnection docket"). (Emphasis added).

⁶ In the Matter of Access Charge Reform, CC Docket No. 96-262 (May 16, 1997) ("Access Charge Reform Order").

⁷ See Iowa Utilities Board, slip op. at 104 n.12 and 103 n.10 (recognizing that "the Act does create a such a division of labor between the state commissions and the FCC with respect to areas where section 251 specifically calls for the Commission's participation" and stating, in footnote 10, that Section 251(g) and exchange access was one of those areas).

reform portion of the competitive trilogy and effectively nullify the Commission's efforts to date in that regard.⁸ That obviously cannot be the result that Congress intended, and Section 251(c)(3) therefore cannot be read to require it. ALCOA v. Bonneville Power Admin., 903 F.2d 585, 755 (9th Cir. 1989) (a "basic rule of statutory construction is that one provision should not be interpreted in a way which . . . renders other provisions of the same statute inconsistent or meaningless"); Environmental Defense Fund, 82 F.3d at 468-69 (refusing to read statute literally where doing so would "frustrate the process of state and federal cooperation and integrated planning [on Clean Air Act issues] that [the section] was created to foster"). As the Supreme Court has stated, "[a] few words of general connotation [e.g., "telecommunications service"] appearing in the text of the statutes should not be given a wide meaning, contrary to settled policy, excepting as a different purpose is plainly shown." United States v. American Trucking Assn's, Inc., 310 U.S. 534, 544 (1940).⁹

⁸ The Commission itself previously recognized these inconsistencies in its Notice of Proposed Rulemaking in CC Docket No. 96-98, stating that "as with section 251(c)(2), allowing interexchange carriers to circumvent Part 69 access charges by subscribing under Section 251(c)(3) to network elements solely for the purpose of obtaining exchange access may be viewed as inconsistent with other provisions in section 251, such as sections 251(i) and 251(g)." NPRM, ¶ 164 (emphasis added).

⁹ The American Trucking court also more fully explained the limits on the "plain meaning" concept. When that [plain] meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one plainly at variance with the policy of the legislation as a whole this Court has followed that purpose, rather than the literal words 310 U.S. at 543 (emphasis added).

2. Reading Section 251(c)(3) to allow IXC's to avoid Part 69 access charges without providing local exchange service to the end-user (or, indeed, without serving any local customer) also would directly conflict with Section 251(i) of the Act. Section 251(i) provides: "Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under Section 201." Section 201 is what gives the Commission its authority over interstate access services, including the rates for those services. See 47 C.F.R. § 69.1. Thus, as the Senate Report made clear,

The obligations and procedures prescribed in [Section 251] do not apply to interconnection agreements between local exchange carriers and telecommunications carriers under section 201 of the 1934 Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the FCC's access charge rules.

S. Rep. No. 23, 104th Cong., 1st Sess. 19 (1995). As indicated in the Conference Report, Joint Explanatory Statement:

New Subsection 251(i) makes clear the conferee's intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act.

Reading Section 251(c)(3) to require "UNE exchange access," however, would not merely "limit" or "affect" the Commission's authority over access services under Part 69, but would completely nullify it. As explained above, if IXC's can use UNEs as a complete substitute for exchange access services, without the additional responsibility and commitment of providing local exchange service,

then the price for switched access effectively would become the same as the price for UNEs, making the Part 69 access rates meaningless. At the same time, primary jurisdiction and control over the pricing of interstate access services would be transferred to the states, which have jurisdiction over UNE rates.¹⁰ See Iowa Utilities Board v. FCC, slip op. at 99-113. Thus, allowing “UNE exchange access” would effectively eliminate the Commission’s Section 201 authority over interstate access charges -- authority Congress specifically retained for the Commission in Section 251(i). Once again, that cannot be a proper reading of the Act, and cannot have been what Congress intended. See ALCOA, 903 F.2d at 755; Natural Resources Defense Council, 822 F.2d at 113.¹¹

3. The expansive reading of Section 251(c)(3) also would undermine the Commission’s ongoing reform of universal service, which is specifically required by Section 254(a)(2) and forms a distinct part of the competition trilogy. As the Commission correctly found, however, interstate access charges are intimately related to universal service reform, in that the subsidies built into those charges

¹⁰ This also would require an immediate re-examination of separations as virtually all interstate access demand would become subject to state jurisdiction.

¹¹ Further proof that Section 251(c)(3) cannot be read in that manner is found in Section 2(a), which was left untouched by the 1996 Act. Section 2(a) states that the Communications Act applies to “all interstate . . . communication.” 47 U.S.C. § 152(a). Exchange access is undeniably an interstate activity. As such, it must continue to be governed by the Commission, not ceded to the states in the form of “UNE exchange access.” See West Virginia University Hospitals v. Casey, 111 S. Ct. 1138, 1147 (1991) (“the purpose of a statute included not only what is set out to change, but also what it resolves to leave alone”).

provide the funding for universal service efforts.¹² Until revised mechanisms for universal service funding are firmly in place, any requirement to price access services or permissible substitutes on a forward-looking cost basis would be unwarranted and premature, as access charges will continue to have a significant impact on universal service reform as access reform is phased in. Access Charge Reform Order, ¶ 9. Indeed, it was to avoid any such disconnect between universal service reform and access charge reform that the Commission has decided to conduct its reforms on parallel time lines. Local Competition Order, ¶ 8 (“It is well recognized that access charge reform is intensely interrelated with the local competition rules of section 251 and the reform of universal service. We will complete access reform before or concurrently with a final order on universal service.”) In fact, it was to maintain the delicate balance among local competition, universal service reform, and access charge reform contemplated by the Act that the Commission instituted three separate proceedings: one on local competition (CC Docket No. 96-98); one on universal service (CC Docket No. 96-45); and one on access charge reform (CC Docket No. 96-262). This balance and the Commission’s ability to harmonize access charge reform and universal service reform would be undermined if, in the short run, Part 69 access charges could be completely circumvented through “UNE exchange access.”

¹² In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket 96-45 (May 8, 1997) (“Universal Service Order”), ¶11.

In sum, to read Section 251(c)(3) to allow IXC's to use "UNE exchange access" without also providing local service would conflict with -- indeed, render superfluous -- several other provisions of the Act. As a matter of logic and of statutory construction, that cannot be the right result. Rather, the Commission should harmonize the different sections by finding that Section 251(c)(3) does not require that UNEs be permitted to be used as a substitute for exchange access service for the provision of interexchange service to end-user local exchange customers of other carriers.

B. Judicial and Commission Decisions Have Confirmed That Section 251(c)(3) Cannot Be Read in a Manner That Eliminates the Jurisdictional Distinction Between UNEs and Exchange Access Service and That There is No Policy Reason for a Contrary Result.

The ruling of at least one court and the Commission itself have confirmed that the Act does not compel the availability of UNEs as a substitute for incumbent LEC exchange access service. In particular, the Eighth Circuit in Iowa Utilities Board v. FCC made it plain that the Act distinguished between interconnection and UNEs, on the one hand, which are key aspects of local competition (and therefore within the state's pricing jurisdiction), and exchange access, on the other hand, which is a service offered to IXC's, and, therefore, for interstate traffic, within the Commission's jurisdiction.

We note that the FCC's jurisdiction over the access charges that LECs collect from interexchange carriers (IXCs) for terminating the IXC's interstate toll calls on the LECs' networks does not imply that the Commission also has jurisdiction over the rates that incumbent LECs may charge competing local exchange carriers for interconnection with or

unbundled access to the incumbent LECs' networks. Interconnection and unbundled access are distinct from exchange access because interconnection and unbundled access provide the requesting carrier with a direct hookup to and extensive use of an incumbent LEC's local network that enables a requesting carrier to provide local exchange services, while exchange access is a service that LECs offer to interexchange carriers without providing the interexchange carriers with such direct and pervasive access to the LECs' networks and without enabling the IXCs to provide local telephone service themselves through the use of the LECs' networks.

Iowa Utilities Board, slip op. at 112-13 n.20 (emphasis added). Thus, consistent with sections 251(g) and 251(i), the Eighth Circuit concluded that Congress, by enacting Sections 251 and 252 to open local exchanges to competition, plainly intended to make UNEs the building blocks of local competition, but did not intend to realign the intra/interstate jurisdictions of the states and the Commission. As the court found, "these functions (i.e., interconnection, unbundled access, resale, and transport and termination of traffic) are fundamentally intrastate in character; thus the Commission's traditional jurisdiction over interstate communications will not be negated by the states regulation of the rates for these services." Id. at 112 (emphasis added).¹³ Of course, "UNE exchange access" would negate the Commission's jurisdiction over interstate access charges overnight.

¹³ The Commission agreed with this view that UNEs are primarily local in nature. "The FCC itself both acknowledges that the Telecommunications Act of 1996 deals primarily with local intrastate markets and recognizes the obligation[] of incumbent LECs to provide . . . unbundled access . . . [is] designed to increase competition in local telecommunications markets. (FCC Br. at 1-3, 5)." Iowa Utilities Board, slip op. at 106 n.16 (emphasis in original). That this makes sense is demonstrated by the fact that an IXC's use of UNEs as a substitute for an incumbent LEC's exchange access service has nothing to do with promoting competition in the local exchange marketplace.

The Eighth Circuit took the same view of the Act and the fundamental distinctions between local exchange service and exchange access in Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068, 1073 (8th Cir. 1997):

CompTel also challenges the FCC's interpretation of interconnection as having a discriminatory impact, by permitting LECs to charge different rates for the same service based on whether the carrier who is seeking interconnection and other network services is a long-distance service provider or a local service provider. But the two kinds of carriers are not, in fact, seeking the same services. The IXC is seeking to use the incumbent LEC's network to route long-distance calls and the newcomer LEC seeks use of the incumbent LEC's network in order to offer a competing local service. Obviously the services sought, while they might be technologically identical (a question beyond our expertise), are distinct. And if the IXC wants access in order to offer local service (in other words, wants to become a LEC), then there is no rate differential. (Emphasis added).

Thus, an IXC that wants "access" to UNEs simply as a substitute for the incumbent LEC's access service, and not "to offer local service," is purchasing a service that is "distinct" from unbundled access. There is no reason to read Section 251(c)(3) to eradicate that distinction.

The Commission recognized the local/interstate distinction between UNEs and exchange access in its First Reconsideration Order in CC Docket No. 96-98.¹⁴ In that Order, the Commission concluded that unbundled local switching could not be used solely to provide exchange access because unbundled local switching includes a line card dedicated to a particular customer loop. This means that, as a

¹⁴ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Order on Reconsideration, (Sept. 27, 1996) ("First Reconsideration Order").

practical matter, a carrier must provide whatever services are requested by the customer whose line connects to the line card and, therefore, cannot use unbundled local switching as a pure substitute for exchange access without also providing local exchange service for that customer. First Reconsideration Order, ¶¶ 11-13. Shared transport, as the Commission repeatedly recognized, cannot be provided separately from unbundled local switching. Third Reconsideration Order (FNPRM), ¶¶ 23 n.69, 25, 42, and 47.¹⁵ Thus, it would appear that, by definition, shared transport could not be used solely as a substitute for exchange access any more than unbundled local switching. Moreover, the First Reconsideration Order confirms that UNEs are local in nature and have been defined by the Commission, as Congress intended, in a manner that makes them most conducive to the competitive provision of local exchange service.¹⁶

¹⁵ Ameritech wishes to make it clear that by discussing “shared transport” and its potential uses in the context of this docket, it is in no way conceding that “shared transport” does in fact qualify as an unbundled network element under the Act, and Ameritech is not waiving any argument it might make in the context of any reconsideration or appeal of the Commission’s decision on that issue.

¹⁶ Citing paragraph 356 of the Local Competition Order, some IXC’s might contend that the Commission has already concluded that they can purchase UNEs as a substitute for exchange access without also providing local service. However, as noted above, the Commission, in the First Reconsideration Order, concluded otherwise with respect to unbundled local switching. Moreover, by issuing the FNPRM, the Commission indicated that it had not, in fact, already resolved the issue of “UNE exchange access,” and that interested parties should address the issue de novo. In addition, the Commission plainly declared in paragraph 356 that it was “confirm[ing]” its “interpretation of Section 251(c)(3) in the NPRM” and cited to paragraphs 159-165 of that document. Significantly, paragraph 164 of the NPRM states that:

[A]llowing interexchange carriers to circumvent Part 69 access charges by subscribing under section 251(c)(3) to network elements solely for the purpose of obtaining exchange access may be viewed as inconsistent with other provisions in section 251, such as sections 251(i) and 251(g), and contrary to Congress’ focus in these sections on promoting local competition. Lastly, such a reading of the statute may effect a fundamental jurisdictional shift by placing interstate access charges under the administration of state commissions. (Emphasis added).

The Commission's actions on access reform to date also make it clear that, consistent with Sections 251(g), 251(i), and 254, it does not interpret the Act as divesting it of authority over interstate exchange access. Most notably, while the Commission favors a "market-based approach" to access charge reform, it rejected suggestions by IXC's that it should "move immediately to forward-looking rates" for exchange access. In so doing, the Commission noted that "any attempt to move immediately to competitive prices for the remaining services would require dramatic cuts in access charges for some carriers," and "could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business conditions." Access Charge Reform Order, ¶¶ 45-46. Such a precipitous price drop also "could lead to significant errors in the level of access charge reductions necessary to reach competitive levels" and thereby "further impede the development of competition in the local markets and disrupt existing services." Id., ¶ 46. In addition, the Commission was aware that access charges may continue to reflect some implicit subsidies for universal service, but found that there was no need to eliminate all such subsidies immediately. Id., ¶ 47.

Allowing IXC's to utilize "UNE exchange access," however, would lead to the very result that the Commission sought to avoid. As a practical matter, allowing "UNE exchange access" would immediately move all access charges to forward-looking rates in an instant, as most states currently appear to believe that forward-looking rates are effectively required for UNEs by Section 252(d). It

would render moot the Commission's deliberately phased-in, market-based approach to interstate access reform. And, as the Commission recognizes, this would be "highly disruptive" to business conditions. In fact, such a result could be confiscatory in the constitutional sense. The question of whether forced pricing on a forward-looking cost basis jeopardizes an incumbent LEC's ability ever to recover its embedded costs becomes even more immediate if the incumbent LEC's access services -- a substantial portion of the carrier's regulated business -- must be immediately re-priced in a manner that ignores the carrier's true costs. See, Brooks -Scanton Co. V. Railroad Commission of Louisiana, 251 U.S. 396 (1920). Such pricing also would immediately eliminate a continued source of funding for universal service, contrary to the Commission's phased-in approach. These are further reasons why Section 251(c)(3) cannot be read literally and still be consistent with the structure and purpose of the Act.

The Access Charge Reform Order further confirms the basic distinctions between UNEs and exchange access service. In explaining why an immediate move to forward-looking access rates was not appropriate, the Commission stated that forward-looking cost models were not currently available "to determine the economic cost of providing access service," primarily because it will take some time to appropriately allocate the significant joint and common costs included in access service. Access Charge Reform Order, ¶ 45. The Commission then contrasted those types of cost models with the cost models it had endorsed for

UNEs, which include fewer joint and common costs and therefore are “more straightforward.” Ibid.

III. CONCLUSION.

Accordingly, the Commission should not -- indeed cannot -- read Section 251(c)(3) to be used by an IXC as a substitute for exchange access service. As the courts and the Commission have recognized, the structure of the statute clearly distinguishes between the local nature of UNEs and the interstate nature of interstate exchange access, and assigns separate regulatory paths to each. Reading Section 251(c)(3) to require the availability of “UNE exchange access” would eliminate the distinction between these paths -- indeed, it would cause the local competition portion of the competitive trilogy to trump the access reform

portion of the trilogy while doing nothing to facilitate or speed local exchange competition. As demonstrated above, that interpretation is flatly inconsistent with other provisions of the statute and the manifest purposes of the 1996 Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Pabian". The signature is fluid and cursive, with a large, stylized initial "M".

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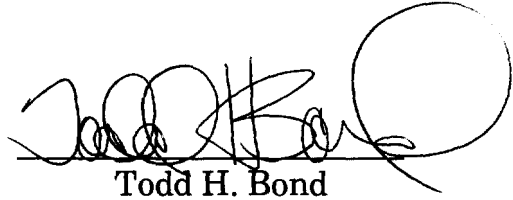
Counsel for Ameritech

Dated: October 2, 1997
[MSP0069.doc]

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Comments of Ameritech has been served on all parties listed on the attached service list, via first class mail, postage prepaid, on this 2nd day of October, 1997.

By:

A handwritten signature in black ink, appearing to read 'Todd H. Bond', written over a horizontal line. The signature is stylized with large loops and a prominent circular flourish at the end.

Todd H. Bond

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